

SENATE BILL REPORT

ESHB 2362

As Reported by Senate Committee On:
Law & Justice, February 19, 2018

Title: An act relating to crime committed by business entities.

Brief Description: Concerning crime committed by business entities.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Pellicciotti, Sawyer, Robinson, Dolan, Chapman, Kilduff, Stanford, Macri, Ryu, Ormsby and Doglio).

Brief History: Passed House: 2/08/18, 97-1.

Committee Activity: Law & Justice: 2/15/18, 2/19/18 [DPA].

Brief Summary of Amended Bill

- Modernizes terminology relating to corporate criminal culpability.
- Clarifies that a business entity found guilty of committing a crime may be liable for legal financial obligations including restitution, crime victims' assessments, costs, fines and penalties.
- Increases the maximum financial penalties for the criminal conduct of a business entity.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

Staff: Shani Bauer (786-7468)

Background: The Washington State Criminal Code (Criminal Code) contains criminal standards for corporate liability. In the Criminal Code, a corporation includes any joint stock association. A high managerial agent means an officer or director of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A corporation may be held criminally liable when:

- the corporation fails to discharge a specific duty of performance imposed on the corporation; or
- the conduct constituting the offense was authorized, solicited, requested, commanded, or tolerated by a high managerial agent acting on behalf of the corporation; or
- the conduct constituting the offense was committed by an agent of the corporation acting within the scope of the agent's employment and the conduct constitutes a criminal offense under state law.

An individual is criminally liable for conduct constituting an offense which the individual performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in the individual's own name or on the individual's behalf. In addition, whenever a duty to act is legally imposed upon a corporation, any agent who knows the agent has or shares primary responsibility for the duty is criminally liable for a reckless or, if a high managerial agent, criminally negligent omission to perform the required act to the same extent as if the duty were imposed directly upon the agent.

When an individual is found guilty of committing a crime, the person is subject to the following maximum terms and penalties:

Classification	Max. Confinement	Max. Fine
Misdemeanor	90 days	\$1,000
Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

When a corporation is found guilty of committing a crime, the corporation is subject to the following maximum penalties:

Classification	Max. Fine
Misdemeanor	\$500
Gross Misdemeanor	\$1000
Felony	\$10,000

Summary of Amended Bill: Terminology and definitions in relation to corporation, agent, and high managerial agent are updated. Corporation is changed to business entity, to include any domestic entity governed by the Washington Corporations Act or laws governing partnerships and nonprofit associations as well as any foreign business entity. High managerial agent means an officer, director, or other agent in a comparable position of authority to exercise the powers of a business entity and manage the affairs and activities of the business entity or to exercise supervision in a managerial capacity of subordinate employees.

A business entity convicted of an offense may be ordered to pay legal financial obligations (LFOs), including restitution, crime victims' assessments, costs, fines, penalties, and other assessment authorized or required by law. All LFOs bear interest from the date of the judgment at the rate applicable to civil judgments. When a business entity is ordered to pay restitution, payments must be distributed to restitution prior to all other obligations. Otherwise, payments on LFOs are to be collected and distributed pursuant to current statutory requirements.

When a business entity is found guilty of committing a crime and no special business fine is specified, the business entity is subject to the following maximum penalties:

Classification	Max. Fine
Misdemeanor	\$50,000
Gross Misdemeanor	\$250,000
Class C Felony	\$500,000
Class B Felony	\$750,000
Class A Felony	\$1,000,000

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Decreases the maximum criminal fine that may be assessed against a business entity from \$1 million to \$750,000 for a Class B felony and from \$750,000 to \$500,000 for a Class C felony.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Maximum fine amounts have not increased since 1925. Current law does not comport with public expectations. In arriving at proposed fine amounts, the sponsor looked to other states, including Colorado which recently updated its statute. It is well past time to address the outdated potential penalties.

A corporate felony still requires the state to meet the burden of proof as to the underlying crime and also prove the relationship of the agent and that the agent was acting on behalf of the business entity. Currently there is not much incentive to pursue these prosecutions because the fine amounts are so low.

Persons Testifying: PRO: Representative Mike Pellicciotti, Prime Sponsor; Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: No one.